SUPREME COURT OF WISCONSIN

NOTICE
This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 21-04

In the Matter of Amending Wis. Stats. §§ 48.299 and 938.299 Regulating the Use of Restraints on Children in Juvenile Court

FILED

MAY 2, 2022

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On September 14, 2021, the Honorable Laura Crivello, Milwaukee County Circuit Court; the Honorable Ramona A. Gonzalez, LaCrosse County Circuit Court; the Honorable Reverend Everett Mitchell, Dane County Circuit Court; the Honorable Suzanne C. O'Neill, Marathon County Circuit Court; the Honorable Michael A. Schumacher, Eau Claire County Circuit Court; and Attorney Eileen A. Hirsch and Attorney Diane R. Rondini, filed this rule petition. The petition asks the court to create a new Wis. Stat. § 48.299 (2m) in the Children's Code and Wis. Stat. § 938.299 (2m) in the Juvenile Justice Code to create a uniform court procedure regarding the use of restraints on children in court proceedings.

Consistent with standard practice, the court voted to solicit written comment. Letters were sent to interested persons on December 1, 2021. Comments were received from Jennifer Ginsburg, Chair, Governor's Juvenile Justice Commission; Cheryl Furstace Daniels,

President, State Bar of Wisconsin on behalf of the Board of Governors; Clare Porter; Janice Knapp-Cordes; John Bauman, Dane County Juvenile Court Administrator; Christina J. Gilbert, Senior Youth Policy Counsel, The Gault Center; Kristen Staley, Co-Director, Midwest Juvenile Detention Center; Craig R. Johnson, President, Wisconsin Justice Initiative; Kit Kerschensteiner, Director of Legal and Advocacy Services, Disability Rights Wisconsin; Erica Nelson, Advocacy Director, Kids Forward, Inc.; Anton S. Jamieson, Rhoda Ricciardi, Benjamin Schulenberg, and Bradford Logsdon, Dane County Circuit Court Commissioners; the Honorable M. Joseph Donald, Presiding Judge, Wisconsin Court of Appeals, District I; Cecelia Marie-Thérèse Klingele, Associate Professor of Law, University of Wisconsin Law School; Kelli S. Thompson, State Public Defender (SPD); Kim Vercauteren, Executive Director, Wisconsin Catholic Conference; Lee D. Schuchart, Law Offices of Crowell & Schuchart, LLC; David Lasee, Brown County District Attorney; the Honorable Marc A. Hammer, Brown County Circuit Court; and Era Laudermilk, Chief of Staff, Law Office of the Cook County Public Defender, Illinois. All the individuals who filed comments support the petition. The petitioners filed a response on January 10, 2022.

The court conducted a public hearing on February 15, 2022. The Honorable Laura Crivello, the Honorable Reverend Everett Mitchell, and Attorney Eileen Hirsch presented the petition to the court. The following speakers appeared in support of the rule petition: Attorney Eileen Fredericks, SPD; the Honorable M. Joseph Donald, Presiding Judge, Wisconsin Court of Appeals, District I; Mary Ann Scali, Executive Director, The Gault Center; Jennifer Ginsburg, Chair, Governor's Juvenile Justice Commission; Sam Benedict, Governor's Juvenile Justice

Commission; Kim Vercauteren, Executive Director, Wisconsin Catholic Conference; and the Honorable Ramona Gonzalez, LaCrosse County Circuit Court.

The court discussed the petition at a closed administrative conference and voted to grant the petition. Therefore,

IT IS ORDERED that effective July 1, 2022:

SECTION 1. 48.299 (2m) (a), (b), (c), and (d) of the statutes are created to read:

48.299 (2m) (a) In this subsection, "restraints" means leather, canvas, rubber, Velcro, or plastic restraints; handcuffs, waist belts, or leg chains; a wheel chair; an electric immobilization device; or any other device used to securely limit the movement of a child's body.

(b) Restraints may not be used on a child during a court proceeding and shall be removed prior to the child being brought into the courtroom and appearing before the court unless the court finds all of the following:

1. The use of restraints is necessary due to any of the following factors:

a. Restraints are necessary to prevent physical harm to the child or another person.

b. The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations, or the child presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

c. There is a founded belief that the child presents a substantial risk of flight from the courtroom.

2. There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including the presence of court personnel, law enforcement officers, or bailiffs.

(c) The court shall provide the child's counsel an opportunity to be heard before the court orders the use of restraints. If the child's counsel informs the court that the child wishes to be present, the court may order telephone or videoconference hearing pursuant to s. 48.299 (5). If restraints are ordered, the court shall make findings of fact in support of the order.

(d) Any restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances may a child be restrained using restraints that are fixed to a wall, floor, or furniture.

SECTION 2. 938.299 (2m) (title), (a), (b), (c), and (d) of the statutes are created to read:

938.299 (2m) USE OF RESTRAINTS.

(a) In this subsection, "restraints" means leather, canvas, rubber, Velcro, or plastic restraints; handcuffs, waist belts, or leg chains; a wheel chair; an electric immobilization device; or any other device used to securely limit the movement of a child's body.

(b) Restraints may not be used on a child during a court proceeding and shall be removed prior to the child being brought into the courtroom and appearing before the court unless the court finds all of the following:

1. The use of restraints is necessary due to any of the following factors:

a. Restraints are necessary to prevent physical harm to the child or another person.

b. The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations, or the child presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

c. There is a founded belief that the child presents a substantial risk of flight from the courtroom.

2. There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including the presence of court personnel, law enforcement officers, or bailiffs.

(c) The court shall provide the child's counsel an opportunity to be heard before the court orders the use of restraints. If the child's counsel informs the court that the child wishes to be present, the court may order telephone or videoconference hearing pursuant to s. 938.299 (5). If restraints are ordered, the court shall make findings of fact in support of the order.

(d) Any restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances may a child be restrained using restraints that are fixed to a wall, floor, or furniture.

IT IS FURTHER ORDERED that notice of the above amendments be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 2nd day of May, 2022.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

¶1 ANNETTE KINGSLAND ZIEGLER, C.J. *(concurring).* I write separately to address the dissent's concerns about this court's authority to adopt the petition, the manner of its adoption, and its implications for law enforcement. To be clear, this rule affects shackling in the courtroom and must not be interpreted in any manner that would infringe on any sheriff's constitutional authority. Notably, law enforcement has not objected to this rule and in fact, the record indicates that the law enforcement who commented, indeed support this rule. Finally, the legislature has not acted on any such provision and this rule is not in contravention to any legislation.

¶2 When presented with a rule petition we must always consider, as a threshold question, whether the requested rule change lies within the court's authority. The precise scope of this court's rulemaking authority has been a topic of some debate and the dissent reflects that debate.[1] In this instance the rule we adopt today rests squarely within our authority. This petition asks us to adopt a uniform court procedural rule regarding the use

[1] See, e.g., S. Ct. Order 19-16, 2020 WI 38 (issued Apr. 17, 2020, eff. July 1, 2020) (Kelly, J., dissenting, joined by Rebecca Grassl Bradley, J.). In 2014, this court created certain procedural rules that permitted, among other things, "ghostwriting." See S. Ct. Order 13-10, 2014 WI 45 (issued June 27, 2014, eff. Jan. 1, 2015). In 2018, the Wisconsin Legislature amended Wis. Stat. § 802.05(2m) as part of a bill pertaining to landlord-tenant law, and in so doing, made changes to the procedure created by the court. 2017 Wis. Act 317, § 53. The amendment had, admittedly, unintended adverse consequences for this court, and so in 2020, this court, with notice to the legislature in turn amended § 802.05(2m) to restore the previous language. Justice Rebecca Grassl Bradley dissented from that order.

of restraints on children in the courtroom, so that their use is neither arbitrary nor indiscriminate. Part of the reason for this petition was to ameliorate the inconsistency that has existed among various courts within this state. Additionally, the rule has the safeguard of a judicial officer weighing and considering all concerns, including the need, among other things, for safety in the courtroom, and making the decision about juvenile shackling in the courtroom. We have consistently recognized that the legislature and the judiciary share the power to regulate practice and procedure in the judicial system. Wis. Stat. § 751.12 (2021-22); E.B. v. State, 111 Wis. 2d 175, 181, 330 N.W.2d 584 (1983). We have authority to implement rules relating to courtroom security. See, e.g., SCR 68.04 (adopted in 2012, it states that "[d]ay to day security decisions and case specific security are within the discretion of each individual judicial officer. The judicial officer shall consult as needed, with the chief judge, the sworn officers, or the court security officers."); see also Stevenson v. Milwaukee County, 140 Wis. 14, 121 N.W. 654 (1909) (confirming the authority of a presiding judge in his or her own courtroom).

¶3 Justice Rebecca Bradley's dissent strongly criticizes the court for adopting a rule similar to one the legislature declined to adopt in 2019. Justice Rebecca Grassl Bradley's dissent, ¶¶53-54. For the reasons stated above, legislative action (or inaction) does not preclude this court from acting in areas of shared authority, and describing this as an affirmative legislative rejection is an overstatement. Senate and Assembly

bills were introduced and referred to committees. No action was taken, and the bills simply failed to pass by the end of the legislative session. See 2019 S.B. 813 (introduced February 12, 2019, and referred to the Senate Committee on Insurance, Financial Services, Government Oversight and Courts; failed to pass on April 1, 2019, per Senate Joint Resolution 1); see also 2019 A.B. 774 (introduced January 22, 2019, and referred to the Assembly Committee of Judiciary; failed to pass on April 1, 2019, per Senate Joint Resolution 1).

¶4 Justice Rebecca Bradley's dissent claims this rule was adopted without explanation. See Justice Rebecca Grassl Bradley's dissent, ¶42. This statement is perplexing because this was a data driven, well-vetted rule petition. Wisconsin does not find itself alone in this rule's adoption. The rule is a model rule that has been adopted in 33 other jurisdictions. It is endorsed by the State Bar of Wisconsin. It has been tried and tested by five counties within Wisconsin, whose judges and law enforcement came before this court and vouched for its efficacy in their courtrooms. There was no opposition to this rule's adoption.

¶5 I was particularly mindful of the perspective of law enforcement throughout our consideration of this petition and whether somehow it might be viewed as infringing upon a sheriff's constitutional authority. The petitioners advised the court that before they even filed this petition they had met with the leadership of the Badger Sheriffs' Association to discuss the proposed rule. We requested public comment before adopting this petition and, as part of that process, we notified both the

Wisconsin Sheriffs & Deputy Sheriffs Association and the Badger State Sheriffs' Association of the petition and they elected not to comment. Consistent with the requirements of Wis. Stat. § 751.12, we also conducted a duly noticed public hearing on February 15, 2022, and no law enforcement professional or organization testified in opposition to the rule.[2] Indeed, the petitioners have advised the court that they were aware of no national law enforcement organizations that have adopted policy statements either supporting, or opposing the model rule we were asked to adopt. We also considered the fact that each of the Wisconsin counties that currently has a similar procedure obtained and benefitted from the valuable input from law enforcement partners. La Crosse County Sheriff's Department Court Services Sergeant Brandon Penzkover stated that his experience with the procedure has been "very good." In Milwaukee County, Secure Detention Director Kevin Gilboy and Milwaukee County Sheriff Earnell Lucas both believe Milwaukee County has proven this procedure can be done safely. Marathon County consulted its sheriff's office when developing its procedure. At our public hearing, members of the court directly asked the petitioners if law enforcement had been consulted, and the petitioners and the Chair of Governor's Juvenile Justice Commission, which includes law enforcement and corrections professionals, testified that it unanimously supports the petition.

[2] https://www.wicourts.gov/supreme/docs/2104intpers.pdf.

¶6 Justice Rebecca Bradley's dissent suggests that this court has wrested from the sheriffs a "power formerly residing within the sheriffs' domain." Justice Rebecca Grassl Bradley's dissent, ¶85. Respectfully, if that were the case, I would not adopt the rule, and if that is determined to be the case, the rule can be amended or removed. We cannot adopt a rule that contravenes or interferes with the Constitution, and any rule, including this one, must be interpreted consistent with constitutional requirements. Similarly, the rule does not alter the discretion of sheriffs to determine how juveniles should be transported to the courtroom, as the dissent suggests.[3] The rule applies only during court proceedings.

¶7 This rule embodies the "the constitutional vision of a cooperative enterprise between the sheriff and the court in keeping courtrooms safe . . . ." See Justice Rebecca Grassl Bradley's dissent, ¶62. The rule defines the term "restraints" and simply provides that restraints are not to be used on a child during a court proceeding unless the court finds that restraints are necessary, for any of various enumerated reasons, i.e., to prevent physical harm to the child or another person; because the child

[3] Justice Rebecca Bradley's dissent implies this rule would apply outside the courthouse. See Justice Rebecca Grassl Bradley's dissent, ¶60. While some Wisconsin counties that already impose limits on juvenile shackling extend those limits to the transportation of juveniles to the court, the rule we adopt today does not go so far. It limits shackling "during a court proceeding" and states that any restraints "shall be removed prior to the child being brought into the courtroom and appearing before the court . . . ."

has a history of disruptive courtroom behavior that has placed others in potentially harmful situations; the child presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; there is a founded belief that the child presents a substantial risk of flight from the courtroom; and there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including the presence of court personnel, law enforcement officers, or bailiffs. The rule adds that the court will not restrain a child using restraints that are fixed to a wall, floor, or furniture.[4]

¶8 While the use of such restraints may be completely appropriate in many circumstances, a judge will consider when and how restraints will be utilized. Far from disregarding the authority of sheriffs, this rule is designed so that if a sheriff (or another person) has concerns that a juvenile presents a risk that merits the use of restraints, that person may inform the judge who will conduct a hearing to determine if restraints are appropriate.

¶9 Finally, the rule is wholly consistent with existing Wisconsin law. In State v. Grinder, 190 Wis. 2d 541, 552, 527 N.W.2d 326 (1995), the court ruled that a circuit court erred when it based its shackling decision on sheriff's department policy, rather than by independently weighing the defendant's risk to

[4] By granting this petition we create Wis. Stat. §§ 48.299(2m) and 938.299(2m) which are substantively identical and appear in the Children's Code and the Juvenile Justice Code, respectively.

courtroom order, decorum, and safety. The same rule should apply to children.

¶10 JILL J. KAROFSKY, J. *(concurring).* I join in full the court's order because the indiscriminate shackling of children causes trauma, shame, and humiliation and is therefore inconsistent with the goal of rehabilitation. I write separately to address the dissent.

¶11 In order to dispel any misconceptions created by this dissent, this concurrence sets out four points regarding the rule. First, this rule was the product of well-established rulemaking authority following a public process. Second, this rule is both well supported and consistent with the law. Third, this rule maintains a judge's flexibility to ensure courtroom safety, changing only the presumption as to when a child should be shackled. And fourth, this rule preserves a judge's authority over his or her courtroom without disturbing a sheriff's traditional authority.

I. A PROPER AND PUBLIC EXERCISE OF AUTHORITY

¶12 The court acted well within its authority in adopting this rule. This court and the legislature have long shared the authority to regulate legal practice and procedure in Wisconsin. The court's authority expressly includes "regulat[ing] pleadings, practice, and procedure in judicial proceedings in all courts, for the purposes of simplifying the same and of promoting the speedy determination of litigation upon its merits" by way of "rules promulgated by it from time to time." Wis. Stat. § 751.12(1); see also Wis. Const. art. VII, § 3, cl. 1. Consistent with that authority, the petitioners asked that the court promulgate a rule

under § 751.12, regulating court procedure as to the use of restraints on children in court (consistent with a model rule that has been adopted in 33 other jurisdictions).

¶13 This rule "goes to the very core of judicial authority——to 'maintain order, decorum and safety in the courtroom.'" State v. Grinder, 190 Wis. 2d 541, 552, 527 N.W.2d 326 (1995). Additionally, it comports with our prior promulgation of rules relating to courtroom security. See SCR 68.04. Furthermore, asserting our co-equal authority over procedural court rules is nothing new. See E.B. v. State, 111 Wis. 2d 175, 330 N.W.2d 584-89 (1983) (holding that the judiciary has "equal power with the legislature to improve practice and procedure" and that the court "should not hesitate to do so in the interest of justice"); In re Constitutionality of Section 251.18, 204 Wis. 501, 512, 236 N.W. 717 (1931) (explaining that the judiciary is often in a better position to promulgate "rules of court" given that they affect the "everyday routine" of the judiciary). This rule simply regulates court procedure, a matter squarely within this court's authority.[1]

¶14 In exercising our authority, we took care to be transparent, acting in a publically open manner. We first

[1] It matters not, as the dissent argues, that the legislature let a similar proposal die. First, the proposal never even received a legislative vote, making the dissent's claim that the "will of the people" was thwarted dubious at best. More importantly, though, this court's membership is also elected by the people of Wisconsin and is responsive to the people's voice when rule making. Besides, nothing about today's order prevents the legislature from amending this rule in the future. See Order No. 13-10, 2014 WI 45 (2014) (eff. Jan. 1, 2015) (creating Wis. Stat. § 802.05(2m)); 2017 WI Act 317, § 53 (amending Wis. Stat. § 802.05(2m)).

solicited public written comment, specifically inviting over 50 concerned parties to comment——including the Badger State Sheriff's Association and the Wisconsin Sheriff's and Deputy Sheriff's Association. The court received sixteen written comments, none of which opposed the petition. We then held a public hearing which was appropriately noticed according to Wis. Stat. § 751.12. That recorded hearing occurred in open court at the Supreme Court Hearing Room in the State Capitol, at which the petitioners presented their case and another seven individuals appeared and spoke in favor of the petition. Again, there was no opposition to the petition. The only activity that occurred behind closed doors was our final vote, the result of which is made public by today's order.

II. WIDESPREAD SUPPORT FOR THE RULE

¶15 As noted above, all public comment supported the rule. Much of the public comment addressed the negative emotional and psychological impact shackling has on children. Children who appear in court shackled experience trauma, shame, and humiliation that "can lead to maladaptive behaviors such as defensiveness, avoidance and aggression." See Dr. Patricia Coffey Affidavit, Rule Petition 21-04 Appendix A. According to Dr. Coffey, "it is probable that indiscriminate shackling leads to self-stigma and self-dehumanization, which may be especially impactful for adolescents' development of their identity" and "may in turn promote increased engagement in antisocial behavior." Id. Moreover, children who suffer from mental illness and trauma suffer additional harm when shackled.

¶16 Shackling also negatively impacts attorney-client communication and dignity and decorum in the courtroom. As an example, the Honorable Reverend Everett Mitchell described the instantaneous change in demeanor he witnessed in his courtroom after ordering the removal of restraints from one child brought before him.[2] He testified at the public rule hearing that her "demeanor was broken" as she was brought into the courtroom handcuffed and with a belt restraint. She was unable to lift her head, make eye contact, interact with the court proceedings, or even sign necessary paperwork until Judge Mitchell ordered her restraints removed, at which point she lifted her head to look at Judge Mitchell and was able to participate in the proceeding.

¶17 It is important to remember that the goals of the juvenile justice system include rehabilitation. See Wis. Stat. § 938.01(2); State v. Hezzie R, 219 Wis. 2d 848, 873, 580 N.W.2d 660 (1998) (acknowledging that the statutes balance various interests but that juvenile provisions remain "distinct from the criminal code provisions," and "rehabilitation of juveniles is a primary objective"). How can a practice that significantly increases trauma, shame, and humiliation possibly be consistent with those rehabilitative goals?

III. A MODEST CHANGE

¶18 This rule represents a modest departure from current practice that will significantly decrease trauma, shame, and humiliation and bring juvenile court procedures in line with

[2] Wisconsin Supreme Court Rules Hearing 21-04 (Feb 15, 2022) https://wiseye.org/2022/02/15/wisconsin-supreme-court-rules-hearing-4/

procedures already in place for adults. See Grinder, 190 Wis. 2d at 552 (establishing that a circuit court "should not order the imposition of restraints unless they are 'necessary to maintain order, decorum, and safety in the courtroom,'" and must set forth on the record "its reasons justifying the need for restraints in that particular case." (quoting Flowers v. State, 43 Wis. 2d 352, 362, 168 N.w.2d 843 (1969)). Currently, by default, some children between the ages of 10 to 17 are brought into court shackled simply because it is routine practice.[3] Unlike in adult court, a judge presiding over a juvenile proceeding is not required to make any specific findings that restraints are "necessary to maintain order, decorum, and safety in the courtroom." Id. This rule merely flips the presumption to match the procedures already in place elsewhere in our court system. By default, juveniles will now enter the courtroom without restraints but restraints may be used if it is shown that they are necessary. Five Wisconsin counties (Dane, Eau Claire, Marathon, Milwaukee, and La Crosse) along with 33 states and the District of Columbia have already established a presumption against shackling and have demonstrated the practice's success.

IV. PRESERVING JUDGES' CONTROL OF COURTROOMS

¶19 Changing the presumption to one against shackling remains consistent with long-standing Wisconsin law. "The judge alone controls the courtroom and alone has the authority and the

[3] While five counties have successfully implemented rules establishing a presumption against shackling and 20 counties rarely shackle children in court, at least 25 counties shackle children indiscriminately.

duty to make a restraint decision." State v. Champlain, 2008 WI App 5, ¶34, 307 Wis. 2d 232, 744 N.W.2d 889. Our position for over half a century has been that "[i]t is for the trial court rather than the police to determine whether such caution [shackling] is necessary to prevent violence or escape." Sparkman v. State, 27 Wis. 2d 92, 96, 133 N.W.2d 776 (1965); see also Grinder, 190 Wis. 2d at 552. Importantly, this rule, in preserving a judge's long-recognized control over the courtroom, does not conflict with a sheriff carrying out her duty of attendance upon the circuit court. See Wis. Stat. § 59.27(3). The sheriff's duty involves "be[ing] present himself, or through a deputy . . . to carry out the Court's orders" and to otherwise preserve order and maintain the peace, quiet, and dignity of the court. Wis. Pro. Police Ass'n v. Dane County, 106 Wis. 2d 303, 312-13, 316 N.W.2d 656 (1982) (quoting Walter H. Anderson, A Treatise on the Law of Sheriffs §§ 325, 327 (1941)) (emphasis added). Under this rule, the sheriff retains the authority to apply restraints to a child being transported to a courtroom. The only change occurs once the juvenile crosses a courtroom threshold. At that point the discretion to shackle a child belongs to the judge. In short, this rule keeps in place the division of discretion that existed long before its adoption, leaving it entirely to a sheriff's discretion as to how best maintain peace

and order at every point up to the courtroom door; once inside, the discretion becomes the judge's.[4]

V. CONCLUSION

¶20 We, elected Justices, adopted this rule under well-established authority and in an open process. The rule is a well-supported measure that ensures children in every Wisconsin county will be treated with the dignity and respect necessary to meet the rehabilitative goals of the juvenile justice system. Moreover, this rule will allow judges to maintain order, decorum, and safety in their courtrooms. The rule changes only a legal presumption while preserving both a judge's authority over his or her courtroom and a sheriff's traditional responsibilities. For these reasons, I respectfully concur in its adoption.

¶21 I am authorized to state that Justice REBECCA FRANK DALLET joins this concurrence.

[4] SCR 68.04, which gives authority over day-to-day security decisions to "each individual judicial officer," likewise recognizes that the sheriff's authority gives way to the judiciary's authority in the courtroom on matters of security.

¶22 PATIENCE DRAKE ROGGENSACK, J. *(dissenting).* I write in dissent because this petition is very important, and it needs more discussion by the Court. There is no reason to rush our decision. The Petitioners, themselves, did not view expedited consideration of the petition to be necessary.

¶23 The Petitioners ably presented Rule Petition 21-04 in the written materials provided with the petition on September 14, 2021 and through the testimony given at the public rules hearing held February 15, 2022. The Petitioners demonstrated a need to review current practices regarding the application of physical restraints to juveniles during court proceedings, commonly referred to as "shackling."

¶24 The petition proposed the creation of two new statutory subsections, Wis. Stat. § 48.299(2m) and Wis. Stat. § 938.299(2m). The provisions of subsection (2m) have identical paragraphs (a) through (d). All focus on "court proceedings."

¶25 The petition asserts that a "statewide rule is necessary to establish consistent shackling procedures and standards in juvenile courts that are consistent with constitutional principles, trauma-informed practices, and the rehabilitative purpose of the juvenile court."

¶26 However, the petition also notes that Dane, Eau Claire, La Crosse, Marathon and Milwaukee counties have enacted local rules that affect shackling of juveniles in their counties. That is, these counties have exercised local control over juvenile shackling. Each county has promulgated a local rule to accomplish

what each county perceived was required by the circumstances in that county based on input from local law enforcement, juvenile detention workers, social services and court personnel. The local rules are very interesting.

¶27 For example, Eau Claire's provision addresses "Use of Mechanical Restraints in the Courtroom Policy." SECTION 6.7A. It provides that restraints "will not be used on an Eau Claire County juvenile during escort to court." Therefore, Eau Claire's rule addresses more concerns about shackling of juveniles than Rule Petition 21-04 evinces. Its protections begin before transport to the courtroom.

¶28 Under the Eau Claire rule, the use of mechanical restraints must be "justified and documented." In addition, if mechanical restraints are employed during escort to court, they "**may not** be removed during court proceedings, unless ordered by the court." (Emphasis in original.) Eau Claire also provides that the "least restrictive means available to assure courtroom safety will be used." The assessment of the juvenile is mandatory and occurs before transport to the courtroom begins.

¶29 If shackling is as traumatic to juveniles as it is asserted to be, why isn't it traumatic during their transport to a courtroom? Why does it become traumatic only when the juvenile steps into the courtroom? Don't we need to discuss this as a Court rather than rushing to grant Rule Petition 21-04 which is silent on transport to a courtroom? I have repeatedly asked for more discussion. No further Court discussion have been held.

¶30 Milwaukee County's policy provides that "Milwaukee County Sheriff's Office (MCSO) is responsible for all escorts of youth from the detention center to the courts." However juveniles in secure detention appear in court "free from all restraints except when there are specific documented reasons to justify restraints." The use of restraints must be the "least restrictive means available" and restraints can by ordered by the court only "to maintain order, decorum, and safety in the courtroom."

¶31 Milwaukee County's policy also requires that juveniles who have court hearings "will be assessed for their risk of safety and security before being escorted to their court proceeding." The initial assessment is done by MCSO or Division of Youth and Family Services (DYFS) after gathering evidence from detention staff. This assessment is updated just before the hearing. Again, its focus on limiting shackling begins before transport to the courtroom.

¶32 Milwaukee County has also developed forms to facilitate comprehensive assessments and subsequent juvenile reviews. Isn't it reasonable for the Court to consider establishing a method for comprehensive assessment of juveniles when shackling is so traumatic to children? Rule Petition 21-04 does not provide such a method.

¶33 Milwaukee County also honors the MCSO's on-going participation in courtroom safety. It provides, "[I]f during the court proceeding, the youth engages in behavior that disturbs the order, decorum, and/or safety in the courtroom, the deputy shall take action consistent with the customary duties and

responsibilities of deputies serving as bailiffs to the Milwaukee County Circuit Court, Children's Division to ensure the safety in the court room." There is no delay for a hearing. If courtroom safety is at risk, action is taken. In an emergency, there is no doubt that MCSO retains its authority for courtroom safety. Rule Petition 21-04 has no such provision.

¶34 It bears noting that Rule Petition 21-04 never mentions the role of county sheriff departments, although they have been responsible for courtroom security throughout the state. Milwaukee County has found a way of working that duty into its local rule. Don't we need to further discuss the role of county sheriff departments in a rule that will affect 72 counties if the petition is granted? Will granting Rule Petition 21-04 negate the authority of MCSO set out in the Milwaukee County local rule? The Court doesn't know; we have never discussed it.

¶35 Badger State Sheriffs Association did not respond to the petition. It didn't support the petition or ask that it not be passed, perhaps because its sheriffs, who serve in counties of diverse size and resources, were not unified in a position for the Association to take. We don't know.

¶36 Five counties have already used local control to address how they believe the issue of shackling should be addressed in their counties. Wisconsin's 72 counties vary in size. Their local needs and resources vary as well. Shouldn't we be sure of the impact of Rule Petition 21-04 on what county sheriffs have been providing in our smaller, as well as our larger counties? The

Court doesn't know what the impact will be; we have never discussed it.

¶37 I do not question the effect of shackling on juveniles, although I do question that its effect occurs at the moment a juvenile steps into the courtroom. However, more than juveniles will be affected by our decision to grant Rule Petition 21-04. Primary responsibility for courtroom safety when an unexpected event occurs also will be affected.

¶38 The petition brings an important issue to the Court for consideration, but the focus of the petition appears to me to be too narrow. So I conclude as I began. I write in dissent because this petition is very important, and it needs more discussion by the Court. There is no reason to rush a decision. The Petitioners, themselves, did not view expedited consideration of the petition to be necessary. A January 1, 2023, effective date would permit more Court discussion to the benefit of juveniles and courts in which they appear.

¶39 REBECCA GRASSL BRADLEY, J. *(dissenting).* "[A]ll laws" enacted pursuant to the Wisconsin Constitution begin with the phrase, "[t]he people of the state of Wisconsin, represented in senate and assembly, do enact as follows." Wis. Const. art. IV, § 17(1) (emphasis added). In contrast, the operative portion of today's order begins, "IT IS ORDERED." The majority makes laws by decree that the people's representatives rejected just last session. In light of this recent history, this court should not grant Rule Petition 21-04. It is an end run around the will of the people.

¶40 In addition to intruding on the prerogative of the legislative branch, these new statutory provisions interfere with the constitutional powers of county sheriffs. They are antithetical to our tradition of leaving courtroom security decisions to county-level officials. These judicially-created laws also raise serious public safety concerns and are premised on the ill-conceived notion that judges are incapable of setting aside their biases. As a final matter, I share Justice Roggensack's concern that the majority failed to give this matter thorough consideration.

¶41 As a former circuit court judge who presided over juvenile proceedings in Milwaukee County Children's Court for more than two years, I share the concerns of the proponents of this petition over the effects of shackling on children. In my experience serving on that bench, many children did not require restraints in order to maintain safety in the courtroom, and

sheriff's deputies would remove them. Some children were in custody because they fled placements and had not committed serious offenses. Shackling would have only exacerbated their trauma stemming from years of abuse and mistreatment.

¶42 The people of Wisconsin, however, did not give us the power to enact policies we prefer, but to declare what the law is—not what we may wish it to be. Like many issues this court is called upon to decide, underlying the proposals presented in this petition is the fundamental question of who possesses the power to make policy. In granting this petition, the majority seizes from the sheriff all power over courtroom security. Because the court hastily overreaches by imposing its policy preferences statewide while overriding the policy preferences of the legislature and encroaching on the constitutional duties of Wisconsin's sheriffs, I dissent.

I. THE LIMITED REACH OF THIS COURT'S LEGISLATIVE POWER

¶43 "The legislative power" is "vested in a senate and assembly" under Article IV, Section 1 of the Wisconsin Constitution. This vesting is a constitutional command, stated in "unambiguous" and "unqualified" language. Bartlett v. Evers, 2020 WI 68, ¶175, 393 Wis. 2d 172, 945 N.W.2d 685 (Kelly, J., concurring/dissenting).

¶44 The legislative power includes the authority to: (1) "declare whether or not there shall be a law"; (2) "determine the general purpose or policy to be achieved by the law"; and (3) "fix the limits within which the law shall operate." Koschkee v. Taylor, 2019 WI 76, ¶11, 387 Wis. 2d 552, 929 N.W.2d 600

(quoting Schmidt v. Dep't of Res. Dev., 39 Wis. 2d 46, 59, 158 N.W.2d 306 (1968)). The legislative power is "the supreme power" because of its extraordinary reach; for this reason, it is "sacred and unalterable in the hands where the community have once placed it[.]" John Locke, Second Treatise of Government § 134 (1690). Once rightfully placed in the hands of a legislative body, that body "cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others." Id. § 141.

¶45 The separation of powers is straightforward and central to our constitutional structure. The "tripartite separation of independent governmental power remains the bedrock of the structure by which we secure liberty in both Wisconsin and the United States." Gabler v. Crime Victims Rts. Bd., 2017 WI 67, ¶3, 376 Wis. 2d 147, 897 N.W.2d 384. Nevertheless, this court's separation of powers jurisprudence, especially regarding its own rulemaking authority, sometimes blurs the lines between the branches, with this court straying from its ring in order to masquerade as the "ringmaster." See Lynn Ahrens, Schoolhouse Rock: Three Ring Government (ABC 1979).

¶46 Oxymoronically, this court has long endorsed separate but shared powers. Law-making is the platonic ideal of a "[c]ore power[]," which is "not for sharing." Fabick v. Evers, 2021 WI 28, ¶58, 396 Wis. 2d 231, 956 N.W.2d 856 (Rebecca Grassl Bradley, J., concurring) (quoting Tetra Tech EC, Inc. v. DOR, 2018 WI 75, ¶47, 382 Wis. 2d 496, 914 N.W.2d 21). However, "[w]e have consistently recognized that the legislature and the judiciary

share the power to regulate practice and procedure in the judicial system." E.B. v. State, 111 Wis. 2d 175, 181, 330 N.W.2d 584 (1983).

¶47 Ultimately, the legislature shares its lawmaking power over this subject matter with this court, not the other way around. In re Constitutionality of Section 251.18, Wis. Statutes, 204 Wis. 501, 509, 236 N.W. 717 (1931) ("[T]he power to regulate procedure has been regarded not as an exclusively legislative power, nor yet as an exclusively judicial power, but certainly as a power properly within the judicial province when not otherwise directed by the legislature." (quoting Edmund M. Morgan, Judicial Regulation of Court Procedure, 2 Minn. L. Rev. 81, 95–96 (1918) (emphasis added)).

¶48 The legislature shares its lawmaking power with the judiciary via Wis. Stat. § 751.12 (2019–20).[1] The first section of that statute states:

> The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice, and procedure in judicial proceedings in all courts, for the purposes of simplifying the same and of promoting the speedy determination of litigation upon its merits. The rules shall not abridge, enlarge, or modify the substantive rights of any litigant. The effective dates for all rules adopted by the court shall be January 1 or July 1. A rule shall not become effective until 60 days after its adoption. All rules promulgated under this section shall be printed by the state printer and paid for out of the state treasury, and the court shall direct the rules to be distributed as it considers proper.

[1] All subsequent references to the Wisconsin Statutes are to the 2019–20 version.

§ 751.12(1). Subsection (2) of this statute states, in relevant part: "All statutes relating to pleading, practice, and procedure may be modified or suspended by rules promulgated under this section."

¶49 Wisconsin Stat. § 751.12(1) declares this court has limited legislative power, which has been delegated to it "for the purposes of simplifying" "pleading, practice, and procedure" and "promoting the speedy determination of litigation upon its merits." The rules adopted today are at best only tangentially related to "procedure" or "practice" and do not seem to "simplify" either. Nor do these rules have anything to do with "promoting the speedy determination of litigation upon its merits." In fact, they will require additional hearings, which will delay determinations on the merits. The majority therefore cannot credibly claim it is acting "for the purposes" contemplated in the language of this authorizing statute.

¶50 The petitioners reason, "[t]he very statutes sought to be amended by this rule, Wis. Stat. § 48.299 and §938.299, are entitled 'procedures at hearings.'"[2] Even if these statutes arguably deal with "procedures," inserting entirely new, non-germane subsections does not automatically make the new provisions procedural as well. Additionally, "[t]he titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes." Wis. Stat. § 990.001(6) (emphasis added).

[2] Mem. Support at 3.

¶51 Wisconsin Stat. § 938.299 currently has eight subsections titled as follows:

1. Closed hearings; exceptions
2. Evidentiary Rules at Hearings
3. Telephone or Live Audiovisual Hearings
4. Establishment of Paternity When Man Alleges Paternity
5. Establishment of Paternity When No Man Alleges Paternity
6. Testimony of Juvenile's Mother Relating to Paternity
7. Indian Juvenile; Tribal Court Involvement
8. Indian Juvenile; Notice

This purportedly "procedural" statute actually contains a hodgepodge of provisions, serving as a placeholder for miscellaneous, largely unrelated subjects. Significantly, not one of these subsections deals with restraints. Wisconsin Stat. § 48.299 has no subtitles, but its content is analogous and is similarly silent on restraints.[3]

¶52 Reliance on Wis. Stat. § 751.12 as a source of authority has significant implications in light of how this court has interpreted it. "A rule adopted by this court in accordance with Wis. Stat. § 751.12 is numbered as a statute, is printed in the Wisconsin Statutes, may be amended by both the court and the legislature, has been described by this court as a statute promulgated under this court's rule-making authority, and has the force of law." Rao v. WMA Securities, Inc., 2008 WI 73, ¶35, 310 Wis. 2d 623, 752 N.W.2d 220 (quotation marks and quoted source

[3] Both of these statutes were created by the legislature, not this court. See 1979 Wis. Act 300, § 44 (creating Wis. Stat. § 48.299); 1995 Wis. Act 77, § 629 (creating Wis. Stat. § 938.299).

omitted; emphasis added). The "rules" adopted by this court are, for all practical purposes, statutes, having even greater status than a "rule" adopted by an administrative agency. This power is foreign to a traditional understanding of the constitutional separation of powers.[4] Few people "really know[] how the game is played"; even lawyers are unaware that this is how (some) of "the sausage gets made"——and unlike the legislature, which deliberates in open chambers, "the room where it happens" is a closed administrative conference.[5] See Lin-Manuel Miranda, Hamilton act 2, The Room Where It Happens (2015).

II. THE LEGISLATURE DECLINED TO ENACT NEARLY THE SAME STATUTES

¶53 In light of these first principles inherent in the separation of powers, I question the propriety of the majority's decision to amend two statutes by creating entirely new subsections, even if the current shared powers doctrine would authorize it. These subsections bear no substantive relationship to the statutes into which they are implanted, and just last

[4] Justice Karofsky seems to suggest this court is promulgating a mere rule that will be printed in the supreme court rules——a totally different codification than the Wisconsin Statutes. Justice Karofsky's Concurrence, ¶¶12-13. The majority does much more than promulgate a mere rule, and this faulty premise infects Justice Karofsky's unsound separation of powers analysis.

[5] Chief Justice Ziegler implies in her concurrence that this court recently had a serious conversation about the scope of its rulemaking power, thereby resolving the "debate." Chief Justice Ziegler's Concurrence, ¶2 n.1. This is untrue. That she cites the ghostwriting petition is particularly troubling. Justice Kelly wrote a brief three sentence dissent, which I joined. One sentence said, "[t]herefore, I respectfully dissent" and another indicated I joined the dissent. The ghostwriting petition contained no opinion at all——by any justice——discussing the parameters of this court's rulemaking power.

session the legislature refused to act on a nearly identical proposal with almost verbatim language. See 2019 Wis. S.B. 813; 2019 Wis. A.B. 774.

	Rule Petition 21-04	2019 Wis. S.B. 813; 2019 Wis. A.B. 774
48.299(2m)(a)[6]	In this subsection, "restraints" means leather, canvas, rubber, Velcro, or plastic restraints; handcuffs, waist belts, or leg chains; a wheel chair; an electric immobilization device; or any other device used to securely limit the movement of a child's body.	Except as provided in par. (b), instruments of restraint such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, or other similar items may not be used on a child during a court proceeding under this chapter and shall be removed prior to the child being brought into the courtroom to appear before the court.
48.299(2m)(b)	Restraints may not be used on a child during a court proceeding and shall be removed prior to the child being brought into the courtroom and appearing before the court unless the court finds all of the following: **1.** The use of restraints is necessary due to any of the following factors: **a.** Restraints are necessary to prevent physical harm to the child or another person. **b.** The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations, or the child presents a substantial risk of inflicting physical harm on himself or	A court may order a child to be restrained during a court proceeding upon request of the district attorney, corporation counsel, or other appropriate official specified under s. 48.09 if the court finds all of the following: **1.** That the use of restraints is necessary due to one of the following factors: **a.** Instruments of restraint are necessary to prevent physical harm to the child or another person. **b.** The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or the child presents a substantial risk of inflicting physical

[6] The bill numbered this subsection, as well as the analogous subsection of Wis. Stat. § 938.299, (2), instead of (2m).

	herself or others as evidenced by recent behavior. **c.** There is a founded belief that the child presents a substantial risk of flight from the courtroom. **2.** There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including the presence of court personnel, law enforcement officers, or bailiffs.	harm on himself or herself or others as evidenced by recent behavior. **c.** There is a reasonable belief that the child presents a substantial risk of flight from the courtroom. **2.** That there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including the presence of court personnel, law enforcement officers, or bailiffs.
48.299(2m)(c)	The court shall provide the child's counsel an opportunity to be heard before the court orders the use of restraints. If the child's counsel informs the court that the child wishes to be present, the court may order telephone or videoconference hearing pursuant to s. 48.299 (5). If restraints are ordered, the court shall make findings of fact in support of the order.	The court shall provide the child's attorney an opportunity to be heard before the court orders the use of restraints under par. (b). The court shall make written findings of fact in support of any order to use restraints under par. (b).
48.299(2m)(d)	Any restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances may a child be restrained using restraints that are fixed to a wall, floor, or furniture.	If the court orders a child to be restrained under par. (b), the restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. No child may be restrained during a court proceeding under this chapter using fixed restraints attached

		to a wall, floor, or furniture.[7]
938.299(2m)(a)	USE OF RESTRAINTS. (a) In this subsection, "restraints" means leather, canvas, rubber, Velcro, or plastic restraints; handcuffs, waist belts, or leg chains; a wheel chair; an electric immobilization device; or any other device used to securely limit the movement of a child's body.	USE OF RESTRAINTS ON A JUVENILE. (a) Except as provided in par. (b), instruments of restraint such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, or other similar items may not be used on a juvenile during a court proceeding under this chapter and shall be removed prior to the juvenile being brought into the courtroom to appear before the court.
938.299(2m)(b)	Restraints may not be used on a child during a court proceeding and shall be removed prior to the child being brought into the courtroom and appearing before the court unless the court finds all of the following: **1.** The use of restraints is necessary due to any of the following factors: **a.** Restraints are necessary to prevent physical harm to the child or another person. **b.** The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations, or the child presents a	A court may order a juvenile to be restrained during a court proceeding upon request of the district attorney, corporation counsel, or other appropriate official specified under s. 938.09 if the court finds all of the following: **1.** That the use of restraints is necessary due to one of the following factors: **a.** Instruments of restraint are necessary to prevent physical harm to the juvenile or another person. **b.** The juvenile has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or the

[7] The bill would have put this sentence in its own subsection, (2)(e), not (2)(d). The bill would have done the same for the analogous subsection of Wis. Stat. § 938.299.

	substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior. **c.** There is a founded belief that the child presents a substantial risk of flight from the courtroom. **2.** There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including the presence of court personnel, law enforcement officers, or bailiffs.	juvenile presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior. **c.** There is a reasonable belief that the juvenile presents a substantial risk of flight from the courtroom. **2.** That there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the juvenile or another person, including the presence of court personnel, law enforcement officers, or bailiffs.
938.299(2m)(c)	The court shall provide the child's counsel an opportunity to be heard before the court orders the use of restraints. If the child's counsel informs the court that the child wishes to be present, the court may order telephone or videoconference hearing pursuant to s. 938.299 (5). If restraints are ordered, the court shall make findings of fact in support of the order.	The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints under par. (b). The court shall make written findings of fact in support of any order to use restraints under par. (b).
938.299(2m)(d)	Any restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances may a child be restrained using	If the court orders a juvenile to be restrained under par. (b), the restraints shall allow the juvenile limited movement of the hands to read and handle documents and

	restraints that are fixed to a wall, floor, or furniture.	writings necessary to the hearing. No juvenile may be restrained during a court proceeding under this chapter using fixed restraints attached to a wall, floor, or furniture.[8]

¶54 Evidently, the people's representatives, whom the people gave the power to make law, rejected a default presumption against juvenile shackling. See League of Women Voters of Wis. v. Evers, 2019 WI 75, ¶35, 387 Wis. 2d 511, 929 N.W.2d 209 ("The people bestowed much power on the legislature, comprised of their representatives whom the people elect to make the laws." (quoting Gabler, 376 Wis. 2d 147, ¶60)). A majority of this court overrides the will of the people by hastily resurrecting a proposal which recently died in a legislative committee.[9]

[8] The bill would have also created another statute, Wis. Stat. § 967.13, with similar language to the two other statutes it created. As I read it, this additional statute would have applied a presumption against shackling juveniles who have been waived into adult court. No similar language appears in the statutes the majority creates.

[9] Justice Karofsky argues the people of Wisconsin elect justices to be quasi-legislators. Justice Karofsky's Concurrence, ¶¶13 n.1, 20. Consistent with the Wisconsin Constitution, the people of Wisconsin actually elect us to interpret the law, not to make it. Undoubtedly some voters may be confused about the proper role of the judiciary, due in no small part to some justices fostering misconceptions via their campaign rhetoric in favor of political policy positions, followed by their seizing of legislative power once elected. Notwithstanding such encroachments, it is a grave abuse of the Wisconsin Constitution, and the judicial oath to uphold it, when judges shamelessly use their power to legislate from the bench.

¶55 Justice Karofsky invites a constitutional crisis by declaring the legislature can fix the problem the majority creates.[10] While nothing prevents the legislature from amending or repealing the statutes adopted by the majority, Justice Karofsky offers nothing to ultimately resolve the ensuing battle between the branches.[11]

III. LOCAL CONTROL & THE SHERIFF'S INHERENT POWER OF ATTENDANCE ON THE COURT

¶56 The majority cannot rely entirely on this court's inherent power under Article VII, Section 3 of the Wisconsin Constitution——the only other provision of law the petitioners cite as a source of rulemaking authority. While "[t]he supreme court shall have superintending and administrative authority over all courts,"[12] the sheriffs, who are elected constitutional officers in their own right, also possess authority in the courtroom. See Wis. Const. art. VI, § 4. Although the Wisconsin Constitution does not describe its powers, "[t]he office of sheriff is one of the most ancient and important in Anglo-American Jurisprudence.

[10] Id., ¶13 n.1 ("[N]othing about today's order prevents the legislature from amending this rule in the future.").

[11] Both Chief Justice Ziegler and Justice Karofsky argue that a bill dying in a legislative committee is not good evidence of the will of the people because bills die all the time, sometimes for no particularly good reason. Bills die regularly because it is much harder for the legislature to pass a statute than it is for this court to promulgate one via judicial fiat. Bicameralism and presentment are the crucible bills must overcome to become law. By design, it is much more difficult than rule by dictatorship. The Wisconsin Constitution, however, does not recognize the vote of four lawyers as superior to the will of the people.

[12] See Wis. Const. art. VII, § 3(1).

Its origins pre-date the Magna Carta." Wis. Prof'l Police Ass'n v. Dane Cnty. (WPPA), 106 Wis. 2d 303, 309, 316 N.W.2d 656 (1982). Accordingly, "under the Wisconsin Constitution the sheriff has the power and prerogatives which that office had under the common law, among which were a very special relationship with the courts." Id. at 305.

¶57 This court has long recognized that sheriffs have their own "inherent" powers,[13] including "[a]ttendance on the Court[.]"[14] Id. at 313. This power "is in the same category of powers inherent in the sheriff as is running the jail." Id. "Just as . . . the legislature cannot deprive the sheriff of control of the jail," it cannot "deprive the sheriff of his authority" related to attendance on the court. Id.; see also Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty., 2016 WI App 56, ¶9, 370 Wis. 2d 644, 883 N.W.2d 154 ("We recognize the following powers of the sheriff as constitutionally protected: the operation of the jail, attendance on the courts, maintaining law and order, and preserving the peace.").

[13] "[T]he constitution nowhere defines what powers, rights and duties shall attach or belong to the office of sheriff. But there can be no doubt that the framers of the constitution had reference to the office with those generally recognized legal duties and functions belonging to it in this country, and in the territory, when the constitution was adopted." Wis. Pro. Police Ass'n/Law Enf't Emp. Rel. Div. v. Dane Cnty., 149 Wis. 2d 699, 706, 439 N.W.2d 625 (Ct. App. 1989) (quoting State ex rel. Kennedy v. Brunst, 26 Wis. 412, 414 (1870) (modification in the original)).

[14] Attendance on the court is a statutory duty as well as a constitutional power. See Wis. Stat. § 59.27(3). Justice Karofsky seems to emphasize the statute, but she overlooks the constitution. See Justice Karofsky's Concurrence, ¶19 (citing § 59.27(3) but not mentioning the duty is also of constitutional importance).

¶58 As a constitutional duty, attendance on the court encompasses those powers necessary to execute it, which are inherent to the office. As a part of this duty, sheriffs must "see that order is preserved," "see that peace and quiet are maintained," and "see that . . . dignity of the court is maintained." 1 Walter H. Anderson, A Treatise on the Law of Sheriffs, Coroners and Constables 321 (1941). Sheriffs must "provide a sufficient number of deputies to perform the court's requirements" if he alone cannot execute the duty. Id. Additionally, the sheriff must ensure attendance on the court is carried out "promptly and without delay." Id.

¶59 When attending on the court, "the sheriff 'represents the sovereign of the State and he has no superiors in his county.'" Dunn Cnty. v. Wis. Emp. Rels. Comm'n, 2006 WI App 120, ¶14, 293 Wis. 2d 637, 718 N.W.2d 138 (quoting Manitowoc Cnty. v. Local 986B, AFSCME, AFL-CIO, 168 Wis. 2d 819, 827, 484 N.W.2d 534 (1992) (emphasis added)). "Accordingly, the sheriff cannot be required to delegate to another county official the directory or supervisory authority over attendance upon the court." Id.

¶60 The majority adopts statutes that burden all sheriffs of this state, without fully appreciating the extent to which that burden may inhibit sheriffs from properly fulfilling their constitutional duty. Attendance on the court includes the discretion to determine how juveniles should be transported into the courtroom. See Milwaukee Deputy Sheriff's Ass'n v. Clarke, 2009 WI App 123, ¶14, 320 Wis. 2d 486, 772 N.W.2d 216; cf. Ozaukee Cnty v. Labor Ass'n of Wis., 2008 WI App 174, ¶30, 315 Wis. 2d 102,

763 N.W.2d 140 (explaining "execution of a court-issued arrest warrant to bring before the court a prisoner is attendance on the court, which cannot be limited by a collective bargaining agreement" (citation omitted)). The court intrudes on the sheriffs' discretion by enacting statutes presumptively requiring sheriff's deputies to remove nearly all "restraints" before the juvenile is "brought into the courtroom[.]"[15] Additionally, the statutes do not allow for restraints if there are "less restrictive alternatives," such as the "presence" of "bailiffs"; this phrasing borders on a command to sheriffs to hire more deputies or to take deputies off patrol to meet the inevitably increased court demand.

¶61 When the sheriff attends on the court, he does act as an "officer of the court," subject to the court's directions——to a degree. See Wis. Pro. Police Ass'n/Law Enf't Emp. Rel. Div. v. Dane Cnty., 149 Wis. 2d 699, 706, 439 N.W.2d 625 (Ct. App. 1989) (quoting 1 Anderson, A Treatise on the Law of Sheriffs, Coroners and Constables, at 320). "The sheriff is the immediate officer of the court and should see that all of its orders in its behalf are properly carried out and obeyed." WPPA, 106 Wis. 2d at 313

[15] Chief Justice Ziegler misrepresents this dissent by saying it "implies this rule would apply outside the courthouse." Chief Justice Ziegler's Concurrence, ¶6 n.3. Even a cursory read reveals it doesn't. The text of the judicially-created statutes says the restraints must be taken off before the juvenile is "brought into the courtroom." According to the majority's distorted views of judicial competence, restraints must be removed prior to entry into the courtroom because judges are incapable of seeing juveniles restrained while at the same time retaining their impartiality. I have much greater faith than the majority in our circuit court judges' ability to maintain their impartiality and uphold their oaths of office.

(quoting 1 Anderson, A Treatise on the Law of Sheriffs, Coroners and Constables, at 321). Executing an arrest warrant is a representative example of carrying out the court's orders. Wis. Pro. Police Ass'n/Law Enf't Emp. Rel. Div., 149 Wis. 2d at 707. Dictating how the sheriff executes his constitutional duties is not.

¶62 "Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of his county . . . . No other county official supervises his work . . . . He chooses his own ways and means of performing it. . . . We recite these qualities and characteristics of the office not because they are novel but because they are so old that they are easily forgotten or unappreciated." WPPA, 106 Wis. 2d at 314 (quoted source omitted). In conflict with this time-honored understanding of the sheriff's prerogatives, this rule "substantially limit[s] the sheriff's ability to perform his official duties as he sees fit" by imposing on the sheriffs "a restriction [] inconsistent with the traditional nature of this office[.]" Id. at 313. At a minimum, this court should respect the constitutional vision of a cooperative enterprise between the sheriff and the court in keeping courtrooms safe, rather than displacing the sheriff altogether by these blanket rules.

¶63 To the extent they do not intrude on the sheriff's exclusive domain, I would leave security decisions to the individual circuit court judges who are perfectly capable of deciding what is necessary and appropriate for the maintenance of

security and decorum in their courtrooms, in consultation with their local sheriffs. See SCR 68.04 ("Day to day security decisions and case specific security are within the discretion of each individual judicial officer. The judicial officer shall consult as needed, with the chief judge, the sworn officers, or the court security officers.") (emphasis added)); see also WPPA, 106 Wis. 2d at 315 ("What the facts are with respect to the court officer's duties are to be resolved by the trial court."). They are in the best position to determine the extent to which local security policies should be modified, and the extent to which certain decisions must be left to the sheriff's expertise and training. See Brief of Amici Curiae Senator Jeff Flake, The National Sheriffs' Association, the Western States Sheriffs' Association, and the Arizona Sheriffs' Association in Support of Petitioners, United States v. Sanchez-Gomez, 584 U.S. __, 138 S. Ct. 1532 (2018) (No. 17-1312), 2017 WL 4350725, *13 ("As often occurs when a court tries to act like a 'super law-enforcement agency,' without law-enforcement training, Arizona's sheriffs and police are left with the choice of risking the safety of their men and women in uniform or risking the threat of costly litigation.").[16]

[16] Chief Justice Ziegler writes, "the petitioners have advised the court that they were aware of no national law enforcement organizations that have adopted policy statements either supporting, or opposing the model rule we were asked to adopt." Chief Justice Ziegler's Concurrence, ¶5. The petitioners never said that. They actually told us: "To the best of petitioner's knowledge, there are no national law enforcement organizations that have adopted policy statements either supporting, or opposing indiscriminate shackling of children in juvenile court." Mem. Support at 15 (emphasis added). This is a carefully-crafted statement; of course, no organization would publicly say, "we

¶64 Until this rule, we trusted the circuit courts, through their respective security and facilities committees (operating under SCR 68) to make their own policies, in accordance with local needs. Operating at the county level, these committees include many stakeholders: (1) a circuit court judge; (2) the chairperson of the county board; (3) the county executive, county administrator, or administrative coordinator; (4) the clerk of the circuit court; (5) the county sheriff; (6) the district attorney; (7) the Wisconsin State Public Defender; (8) a circuit court commissioner; (9) one lawyer designated by the president of the local bar association; (10) one representative of a victim-witness support organization; and (11) one representative of the facilities/maintenance department. SCR 68.05(1). These committees are required to "meet quarterly" and "coordinate and develop general court security and facilities policies[.]" SCR 68.05(3)-(4). Counties that wanted to limit restraints on juveniles had already been utilizing these committees to make that decision.[17] Joe Forward, Shackling Kids: Counties Shifting on

support indiscriminate shackling of children." The very phrase "indiscriminate shackling" is a branding technique crafted by attorneys, and apparently accepted without examination by this court. There is a vast difference between opposing shackling as a policy matter and respecting the constitutional allocation of discretion to sheriffs regarding the use of restraints.

[17] Many of the counties that have adopted these policies are quite large compared to the majority of counties in Wisconsin. Some of them practically closed their courthouses during the COVID-19 pandemic and some continue to severely limit in-person hearings. As Justice Roggensack explains in her dissent, these local policies are not the same as the statutes the majority adopts. Consequently, the experience of these counties to date is not reflective of how these statutes will work in practice.

Policy, but Wisconsin in the Minority, WisBar InsideTrack, Dec. 2017, https://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?Volume=9&Issue=23&ArticleID=26018 ("Currently, security and facility committees provide a mechanism for circuit courts to make these types of security decisions, recognizing that each county is different. The rules note an intent to establish a 'flexible framework' on security issues.").

¶65 The purpose of these committees is to "establish[] a flexible framework for courts' participation in decision-making regarding court facilities while recognizing the wide range of needs and circumstances which exist in counties across the state." SCR 68.01(2). This court has publicly taken the position that "[i]n Wisconsin, it is the responsibility of judges, court staff, and sheriffs to work together to ensure courtrooms are safe places, not only where defendants' rights are upheld, but also where disputes are settled peacefully, according to the law[.]" Forward, Shackling Kids (quoting Tom Sheehan). "These officials are best positioned to evaluate safety and security needs for their courtrooms on any given day and in any given situation." Id. (emphasis added). Every county has a different sheriff's department, with a different budget and different needs. That is why this court has historically stayed out of these decisions, expressly adopting rules favoring local control.

¶66 Chief Justice Ziegler seems to suggest uniformity is to be favored over local control.[18] Uniformity, she suggests, ensures

[18] Chief Justice Ziegler's Concurrence, ¶2.

"use [of restraints] is neither arbitrary nor indiscriminate."[19] Uniformity for uniformity's sake forsakes the American system of law, which codifies a federalist form of government, under which each of fifty states may enact different laws, reflecting differences in tradition and perspective. Recognizing the authority of counties to make decisions based on the will of their citizens is neither "arbitrary" nor "indiscriminate"——it is the essence of American self-governance. The uniformity advocated by the Chief Justice smacks of statism, under which self-styled "experts" override the will of the people because the "experts" think they know what is "best."

IV. IMPLICATIONS FOR COURTROOM SAFETY

¶67 Courtroom security should not be taken lightly. In 2002, on the third floor of the Milwaukee County Safety Building, in the courtroom of the Honorable Jacqueline Schellinger, a 20-year-old defendant jumped into the jury box as the jury was reading a guilty verdict on charges of felony murder and armed robbery. Murder Defendant Killed in Court Shooting, CNN.com (May 30, 2002), http://www.cnn.com/2002/LAW/05/29/court.shooting/index.html. He then tried to break a window to escape. Id. He was able to grab a bailiff's gun, which he then discharged, shooting the bailiff in the leg as the two struggled. Id. Had a second bailiff not been present to bravely wrestle with the defendant——who bit him in the process——for the gun, innocent people could have been killed. Id. The tragedy ended without a mass shooting when a Milwaukee police

[19] Id.

detective——present in the courtroom as a witness——fired several shots, killing the defendant. Id.

¶68 The risk has not abated with the passage of time. In 2016, a handcuffed pretrial detainee in Michigan disarmed a sheriff's deputy, killed two bailiffs, shot a bystander in the arm, and took hostages. United States v. Sanchez-Gomez, 859 F.3d 649, 684 n.14 (9th Cir. 2017) (en banc) (Ikuta, J., dissenting), vacated and remanded, 138 S. Ct. 1532 (2018). The "St. Joseph Courthouse Shooting" is but one of many acts of violence that have occurred in America's courts.

¶69 In 2014, a state judge in Nevada recounted his experience with court-related violence:

> Eight years ago, while I stood in my chambers at the Family Court building in Reno, Nevada, a sniper shot me just above the heart from the upper level of a parking garage about 200 yards away. The shooter was a husband no longer content with battling his wife about assets and child custody in a divorce action. I wasn't his first target that morning. Before driving to the courthouse, he stabbed his wife to death at his suburban home during an exchange of their nine-year-old daughter.

Chuck Weller, What Judges Should Know About Court-Related Violence, 53 Judges' J. 28, 28 (2014). Obviously, shackling is not going to prevent a sniper attack, but this event nonetheless highlights the serious risk of violence against judges and court staff.

¶70 Judges are often the target of violence by litigants who feel they have been wronged and cannot cope with the emotional

turmoil.[20] Id. at 28–29. "One-third of targeted courthouse attacks are prompted by an intent to delay, disrupt, or influence legal proceedings. Two-thirds are motivated by a desire to take revenge. More than half of perpetrators seeking revenge intend to kill." Id. at 29. "Prisoner escape is the second most common occasion for courthouse shootings, accounting for about one-quarter of the violence."[21] Id.

¶71 According to a study conducted after the Nevada sniper attack, judges in that judicial district were seriously concerned that the psychological burden placed on them by the attack affected their decisionmaking. Id. at 30. The study indicated that trauma "can lower memory capacity, interrupt decision making, and increase stereotyping in decision makers." Id. "It is axiomatic that there can be no faith in justice or the fairness and dignity of judicial proceedings if judicial officers or others protecting the efficient functioning of the proceedings are themselves subject to risk of direct harm." See Brief of Amicus Curiae California State Sheriffs' Association in Support of Petitioners, United States v. Sanchez-Gomez, 584 U.S. __, 138 S. Ct. 1532 (2018) (No. 17-1312), 2017 WL 4404964, *16.

[20] The concern for judicial safety is so high that Wisconsin's criminal code has specific statutes addressing this issue. See, e.g., Wis. Stat. § 940.203 (defining the crime of battery or threat to an officer of the court or law enforcement officer).

[21] About 1 in 4 judges in America carry concealed weapons. Our Survey: 1 in 4 Judges Carries a Gun, Nat'l Jud. Coll. (Sept. 21, 2017), https://www.judges.org/news-and-info/1-in-4/. That is no coincidence. After the shooting of an Ohio judge in 2017 who returned fire, many judges began considering whether they should carry as well. See id.

¶72 It is difficult to accurately predict who may be a threat. "[T]he seriousness of an offense is a poor predictor of who has contraband . . . . People detained for minor offenses can turn out to be the most devious and dangerous criminals." Florence v. Bd. of Chosen Freeholders of the Cnty. of Burlington, 566 U.S. 318, 334 (2012). Criminal records are often incomplete, further complicating the matter. See Brief of Amicus Curiae California State Sheriffs' Association, at *14–15. Those who manage inmates on a daily basis are better suited to make predictions, given their "specific knowledge of risks, based on actual confrontation with types of contraband, methods of smuggling, gang control, etc." Id. at *15. They are also in a better position to determine how groups of detainees should be handled. "The rights of one individual inmate to be free from restraints simply cannot override the rights of other inmates to a safe and secure environment in the courtroom setting, particularly where there is an articulated risk of inmate-on-inmate violence. If an inmate were planning on carrying out an attack on another inmate, what better location for that than the courtroom, where both inmates might appear at the same time free from safety restraints?!" Id.

¶73 Notwithstanding the occasional involvement of judges in defending against violence in the courtroom, ordinarily it is sheriff's deputies who engage with perpetrators, neutralize threats, and ensure the safety of everyone present——not judges and certainly not the members of this court. The majority should have deferred to the expertise and knowledge of the sheriffs rather

than assuming judges know best in an area beyond their area of competence.[22]

V. THE DISTINCTION BETWEEN JUDGES & JURIES

¶74 One of the most troubling arguments advanced in support of this petition is that judges cannot see a juvenile in restraints and thereafter make impartial determinations. Courts have long worried that juries may become biased against a criminal defendant if they see shackles. Deck v. Missouri, 544 U.S. 622, 630–32 (2005) (holding detainees have a Fifth and Fourteenth Amendment due process right not to be shackled in front of a jury); Illinois v. Allen, 397 U.S. 337, 344 (1970) (explaining the sight of shackles might impact how a jury feels about a defendant). "[W]hen a court, in its discretion, orders a defendant placed in shackles during the course of a trial, it should be aware that the restraints may psychologically engender prejudice in the minds of jurors when they view 'a man presumed to be innocent in the chains . . . of the convicted.'" State v. Grinder, 190 Wis. 2d 541, 551–52, 527 N.W.2d 326 (1995) (quoting State v. Cassel, 48 Wis. 2d 619, 624, 180 N.W.2d 607 (1970)).[23]

[22] Although many juvenile cases involve non-violent offenses, some delinquency proceedings adjudicate deadly serious crimes. See, e.g., State v. X.S., No. 2021AP419, unpublished slip op., ¶10 (Wis. Ct. App. July 20, 2021), petition for review granted (concluding the circuit court committed reversible error by failing to articulate a sufficient basis for not waiving into adult court a juvenile who shot eight people at Mayfair Mall and noting the circuit court's primary rationale was "juvenile court handles serious cases like this 'all the time'").

[23] Chief Justice Ziegler misunderstands Grinder if she thinks it applies to proceedings occurring outside the presence of a jury. See Chief Justice Ziegler's Concurrence, ¶9. It doesn't. This court actually concluded, "the circuit court's erroneous exercise

Traditionally, this longstanding concern has not extended to judges, who are presumed capable of setting aside information that might prejudice the average person:

> The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need.
>
> This rule has deep roots in the common law. In the 18th century, Blackstone wrote that "it is laid down in our an[c]ient books, that, though under an indictment of the highest nature," a defendant "must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape." 4 W. Blackstone, Commentaries on the Laws of England 317 (1769) (footnote omitted); see also 3 E. Coke, Institutes of the Laws of England *34 ("If felons come in judgement to answer, . . . they shall be out of irons, and all manner of bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will"). Blackstone and other English authorities recognized that the rule did not apply at "the time of arraignment," or like proceedings before the judge. Blackstone, supra, at 317; see also Trial of Christopher Layer, 16 How. St. Tr. 94, 99 (K.B.1722). It was meant to protect defendants appearing at trial before a jury. See King v. Waite, 1 Leach 28, 36, 168 Eng. Rep. 117, 120 (K.B.1743) ("[B]eing put upon his trial, the Court immediately ordered [the defendant's] fetters to be knocked off").

Deck, 544 U.S. at 626 (emphasis added) (ellipsis and other modifications except for [c] in the original).

---

of discretion did not result in a denial of a fair trial for Grinder because the court took adequate steps, in advance of any problems which might have occurred, to conceal the shackles from the view of the jury." State v. Grinder, 190 Wis. 2d 541, 552, 527 N.W.2d 326 (1995). "There is no evidence that the jury ever saw Grinder shackled, either while seated at the defense table or when he was on the witness stand." Id. at 553. The petitioners' representations regarding the relevance of Grinder seem to have been blindly accepted by the majority, but Grinder obviously has no application beyond the confines of a jury trial.

¶75 Courts have declined to recognize a constitutional right not to be shackled during proceedings before a judge. See, e.g., United States v. Zuber, 118 F.3d 101, 103-04 (2d Cir. 1997). In proceedings from which a jury is absent, judges have been allowed to defer to law enforcement's expertise in determining appropriate precautions. Id. at 104. "It has never been suggested——and it is not the rule——that every time a person in custody is brought into a courtroom in restraints, a hearing on the record with counsel is required, much less an evidentiary hearing and factfinding by the district court." Id. (emphasis added). The majority abandons this prevailing practice.

¶76 Unlike juries, judges are presumed capable of disregarding impermissible factors when making decisions. Id. (citations omitted). Judges' training and experience is supposed to set them apart from the ordinary citizen. Unlike most jurors, judges are accustomed to interacting with juvenile offenders and criminal defendants. For all of these reasons, circumstances triggering bias on the part of a juror will not have a similar effect on a judge, or at least we should not presume they will without proof. For example, "many of the management problems which a trial court invariably has to wrestle with in order to guard against unfair prejudice when one takes the proverbial Fifth do not exist in the context of a bench trial." LiButti v. United States, 107 F.3d 110, 124 (2d Cir. 1997).

¶77 Even social scientists who have studied the issue acknowledge the lack of evidence supporting the proposition that judges bear biases against shackled defendants. See Neusha Etemad,

Note, To Shackle or Not to Shackle? The Effect of Shackling on Judicial Decision-Making, 28 S. Cal. Rev. L. & Soc. Just. 349, 363 (2019) ("[T]here is not yet sufficient research that examines whether or to what extent judges are biased by the sight of restraints."); Fatma E. Marouf, The Unconstitutional Use of Restraints in Removal Proceedings, 67 Baylor L. Rev. 214, 277 (2015) ("Future research that specifically examines whether——or to what extent——judges are susceptible to prejudice by the sight of restraints would be extremely helpful."). See generally Brian H. Borstein, Judges v. Juries, Ct. Rev., 2006, at 56, 56 ("There have been relatively few systematic studies of judicial decision making, perhaps because of the difficulties in recruiting judges as research participants and the complexity of what judges do.").

VI. "Work to Standard, not to Time"

¶78 The military operates under the principle that its members should "work to standard, not to time."[24] While deadlines matter in the military and beyond, an arbitrary deadline isn't really a deadline at all. When lives are not on the line, it is always wise to take time to thoroughly consider a proposed course of action. Unfortunately for the safety of Wisconsin's citizens as well as the constitutional order, the majority flips the military's mantra to: "work to time, not to standard." The people of Wisconsin deserve better.[25]

[24] 3 Ways Military Leaders Energize Workplace Culture, Recruit Military (last visited Apr. 28, 2022), https://recruitmilitary.com/employers/resource/1225-3-ways-military-leaders-impact-workplace-culture.

[25] Justice Roggensack's Dissent, ¶22.

¶79 Earlier this term, four justices hastily substituted their subjective will for the law by racially gerrymandering the state's legislative districts. Three of us urged them to slow down and take the time to study the Equal Protection Clause and the Voting Rights Act of 1965——to no avail. In an embarrassing moment for this court, the United States Supreme Court summarily reversed the majority's racial gerrymander. Wis. Legislature v. Wis. Elections Comm'n, 595 U.S. __, 142 S. Ct. 1245 (2022) (per curiam). On remand, a majority of this court voted to undo the gerrymander.

¶80 Redistricting redirected this court's attention from the bread and butter issues of state law we primarily resolve. We knew this when we took the case,[26] but we took it anyway because it was our constitutional duty. See Johnson v. Wis. Elections Comm'n, No. 2021AP1450-OA, unpublished order, at 14 (Wis. Sept. 22, 2021, as amended Sept. 24) (Rebecca Grassl Bradley, J., concurring) ("While some may wish to 'let this cup pass' this is 'our job . . . . Let's do our job." (quoted source omitted)).

¶81 While this court may be taxed after the diversion of time and attention to redistricting as an initial matter and on remand to correct the majority's mistakes, we should nevertheless

[26] See Wisconsin Supreme Court Public Hearing: Rule Petition 20-03, Redistricting Rules, at 36:57 (Jan. 14, 2021) (statement of Roggensack, C.J.), https://wiseye.org/2021/01/14/wisconsin-supreme-court-public-hearing-redistricting-rule-petition/ ("I have a judicial assistant and one law clerk and myself. It's we three who operate my office. My colleagues are in the same place. And drawing maps would take a huge staff. We don't have them. And since we work for the State, we can't just go hire somebody. . . . I don't know how in the world you think the court could ever draw the maps.").

"work to standard, not to time."[27] The hastiness that led to summary reversal by the United States Supreme Court proves that rushed decision-making only creates more problems, and therefore more corrective work. Should an act of violence occur in a courtroom because the majority decided to neuter the sheriffs, it will be directly attributable to the majority of this court for refusing to carefully consider this petition. The road to hell is often paved with good intentions, but it is nonetheless bloody.

¶82 This order issues prematurely without a rational, thorough discussion because five justices want to create law immediately. Irony imbues the majority's artificial urgency: it stems from Wis. Stat. § 751.12(1), which states, in relevant part, "[t]he effective dates for all rules adopted by the court shall be January 1 or July 1. A rule shall not become effective until 60 days after its adoption." On the one hand, the majority aggressively asserts co-equal legislative power, on par with the actual legislature; on the other hand, the majority tacitly acknowledges at least some limits. If this court truly possesses

[27] In the 1970s, the people of Wisconsin created the court of appeals out of fear that an increased appellate backlog at this court was causing the justices to sacrifice quality for quantity. Citizens Study Comm'n on Jud. Org., Report to Governor Patrick J. Lucey 78 (1973) (on file at the David T. Prosser Jr. State Law Library) ("In the rush to cope with its increasing calendar, the Supreme Court must invariably sacrifice quality for quantity. Increasing appellate backlogs necessarily produce a dilution in craftsmanship. . . . The size of this caseload can only have a detrimental effect on the quality of the Supreme Court's work."). Although some people may judge this court based on the number of petitions it resolves, it is a meaningless statistic. Deciding matters under artificial timelines in order to achieve a speedy clearance rate is not a very good way of declaring the law (or in this case, creating it).

the power it asserts in its order, the effective date could be whatever a majority of this court declares. Under the boundless power the majority wields, nothing would prevent Chief Justice Ziegler from issuing this order on May 3 with a July 1 effective date. After all, "[w]e have consistently recognized that the legislature and the judiciary share the power to regulate practice and procedure in the judicial system."[28]

¶83 The majority neglects to address a constitutional conundrum of its own making: If the judiciary may enact a statute with no public deliberation or any consideration of its constitutionality, how can we accord such a statute a presumption of constitutionality? See Mayo v. Wis. Injured Patients & Families Compensation Fund, 2018 WI 78, ¶74, 383 Wis. 2d 1, 914 N.W.2d 678 (Rebecca Grassl Bradley, J., concurring). That presumption is built on the questionable premise that legislators verify the constitutionality of a law before voting to pass it. This court has not done so. In spite of the requests of two members of this court to discuss the constitutionality of this petition, as well as the court's authority to grant it, the majority indiscriminately adopts it anyway. Exercising the unchecked power to make, enforce, and declare the law threatens the liberty of the people. See Montesquieu, The Spirit of the Laws (1748) ("[T]here is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control,

[28] Chief Justice Ziegler's Concurrence, ¶2 (ironically citing Wis. Stat. § 751.12).

for the judge would then be the legislator."). In an extraordinary misconception of our powers, Chief Justice Ziegler shockingly says that if these statutes are later determined to interfere with the constitutional power of county sheriffs, "the rule can be amended or removed."[29] We should determine the limits of our authority before we exercise it, not after. As those subjected to such tyranny well understand, a constitutional harm is not easily undone.

VI. CONCLUSION

> ¶84 I've been in this building long enough to know that when you have a public hearing and you have a whole lot of people show up, that is not necessarily indicative of the sentiments of all residents of the state of Wisconsin. I've just seen that displayed many times, so I don't have any kind of big takeaway on that basis at all, when there's a public hearing up.

Executive Session of the Wisconsin Senate Committee on Government Operations, Legal Review, and Consumer Protection, at 8:05 (Nov. 4, 2021) (statement of Senator Duey Stroebel (Sen. District 20)), https://wiseye.org/2021/11/04/senate-committee-on-government-operations-legal-review-and-consumer-protection-9/.

¶85 No person or organization expended political capital opposing Rule Petition 21-04. For this reason, a majority of this court assumes (incorrectly) it can set aside its obligation to thoroughly examine not only the consequences of granting this petition but also whether a lawful basis exists for exercising power formerly residing within the sheriffs' domain. The majority should have deferred to the Wisconsin Legislature, which only

[29] Id., ¶8.

recently rejected a bill that would have enacted the same presumption against shackling. Granting this petition reflects the will of five judges but it does not reflect the people's will. I therefore dissent.